

1 JOSHUA A. SLIKER, ESQ.
2 Nevada Bar No. 12493
3 KYLE J. HOYT, ESQ.
4 Nevada Bar No. 14886
3 **JACKSON LEWIS P.C.**
4 300 S. Fourth Street, Ste. 900
4 Las Vegas, Nevada 89101
Telephone: (702) 921-2460
5 E-Mail: joshua.sliker@jacksonlewis.com
E-Mail: kyle.hoyt@jacksonlewis.com

6 DALE M. CENDALI, ESQ.
Admitted Pro Hac Vice
7 **KIRKLAND & ELLIS LLP**
601 Lexington Avenue
8 New York, New York 10022
Telephone: (212) 446-4800
9 E-Mail: dale.cendali@kirkland.com

10 ALLISON W. BUCHNER, ESQ.
Admitted Pro Hac Vice
11 **KIRKLAND & ELLIS LLP**
2049 Century Park East, Ste. 3700
12 Los Angeles, California 90067
Telephone: (310) 552-4200
13 E-Mail: allison.buchner@kirkland.com

14 DREW MORRILL, ESQ.
Admitted Pro Hac Vice
15 **KIRKLAND & ELLIS LLP**
555 S. Flower Street, Ste. 3700
Los Angeles, California 90071
Telephone: (213) 680-8278
16 E-Mail: drew.morrill@kirkland.com

17 Attorneys for Plaintiff Byrna Technologies, Inc.

18 **UNITED STATES DISTRICT COURT**

19 **DISTRICT OF NEVADA**

20 BYRNA TECHNOLOGIES, INC., a Delaware
corporation,

21 Plaintiff,

22 vs.

23 DUKE DEFENSE USA, INC., a Delaware
corporation; BOUGIEFIT, LLC, a Nevada
limited liability company; ZYN APPAREL, a
Delaware limited liability company; REILLY
SCHUELER, an individual; BENJAMIN M.
FLAM; an individual; JONATHAN COBB
SANDERS, an individual; RANDALL
CLIFTON, an individual; DENI STRAHL, an
individual; BRAD THOMAS, an individual;
APRIL WOODWARD, an individual; and
TYLER AKIN, an individual,

28 Defendants.

Case No.: 2:21-cv-01559-APG-DJA

**PLAINTIFF'S MOTION TO EXTEND TIME
TO RESPOND TO DEFENDANTS' MOTION
TO DISMISS (ECF NO. 29)**

(SECOND REQUEST)

1 Plaintiff Byrna Technologies, Inc. (“Byrna” or “Plaintiff”), by and through its counsel, the law
 2 firms of Jackson Lewis P.C., and Kirkland & Ellis LLP, hereby submits the instant Motion to Extend
 3 the Time for Plaintiff to Respond to Defendants’ Duke Defense USA, Inc. (“Duke USA”), Zyn Apparel,
 4 LLC d/b/a Treezyn (“Treezyn”), Reilly Schueler (“Schueler”), Benjamin M. Flam (“Flam”), Jonathan
 5 Cobb Sanders (“Sanders”), Randall Clifton (“Clifton”), Deni Strahl (“Strahl”), and April Woodward
 6 (“Woodward”) (collectively, “Defendants”) Motion to Dismiss. This Motion is made pursuant to Fed.
 7 R. Civ. P. 6 and LR IA 6-1, and is based on the following Memorandum of Points and Authorities, all
 8 pleadings and documents on file with the Court, and any argument that the Court deems proper.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 On September 28, 2021, Defendants Duke USA, Treezyn, Schueler, Flam, Sanders, Clifton,
 11 Strahl and Woodward, through their attorney Marc Cook, Esq., filed a Motion to Dismiss Plaintiff’s
 12 Complaint. ECF No. 29. Plaintiff’s response was due by October 12, 2021. On October 5, 2021, Plaintiff
 13 and Defendants entered into a stipulation whereby Plaintiff’s time to respond to Defendants’ Motion to
 14 Dismiss was extended to October 26, 2021. ECF No. 38. That same day, Mr. Cook filed a Motion to
 15 Withdraw as counsel of record for Defendants which the Court granted the following day. ECF No. 39.
 16 In its order granting Mr. Cook’s motion, the Court ordered that Duke USA and Treezyn must notify the
 17 Court by November 5, 2021 “if they will retain new counsel if they intend to continue to litigate” this
 18 case. *Id.* at p. 2. The Court also ordered that Defendants Schueler, Flam, Sanders, Clifton, Strahl and
 19 Woodward must notify the court by November 5, 2021 “whether they intend to proceed *pro se* or retain
 20 counsel.” *Id.*

21 In light of these events, Plaintiff now moves for an extension of time to November 12, 2021 to
 22 respond to Defendants’ Motion to Dismiss. This is Plaintiff’s second request for an extension of the
 23 subject deadline. The decision to grant an extension or continuance is within the Court’s sound
 24 discretion. *F.T.C. v. Gill*, 265 F.3d 944, 954-55 (9th Cir. 2001). Federal Rule of Civil Procedure 6(b)(1)
 25 provides that when an act must be done within a specified time, the Court “may, for good cause, extend
 26 the time . . . with or without motion or notice if the court acts, or if a request is made, before the original
 27 time or its extension expires” The “good cause” standard “primarily considers the diligence of the
 28 party seeking the amendment.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 715 F.3d 716, 737

1 (9th Cir. 2013).

2 Here, good cause exists to extend the deadline for Plaintiff to respond to Defendants' Motion
 3 to Dismiss. As a threshold matter, Plaintiff brings the instant motion before the deadline to respond and
 4 thus within the requirements of Fed. R. Civ. P. 6(b)(1). *See Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d
 5 1253, 1259 (9th Cir. 2010) (requests for extensions of time made before the applicable deadline has
 6 passed should generally be granted in the absence of bad faith or prejudice to adverse party; good cause
 7 for an extension of time under Rule 6(b) is a "non-rigorous standard" that is construed broadly).

8 An extension is also warranted because given the withdrawal of Defendants' counsel, Plaintiff
 9 is uncertain whether Defendants intend to continue litigating this case. Plaintiff's requested extension
 10 takes into account Defendants' November 5th deadline to notify the Court of their intentions which will
 11 provide greater clarity. Indeed, if Defendants do not respond or indicate that they do not intend to
 12 continue litigating, that may very well obviate the need for Plaintiff to respond to Defendants' Motion
 13 at all.

14 Further, Plaintiff is engaged in negotiations with several Defendants to determine if resolution
 15 of Plaintiff's claims against them can be reached. An extension of time will help conserve the parties'
 16 respective resources while focused on such negotiations. In addition, if resolution is reached, it will
 17 reduce the number of parties involved in this case and narrow the claims and events at issue. Thus,
 18 considerations of efficiency and judicial economy also weigh in favor of granting Plaintiff's requested
 19 extension.

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1 Plaintiff makes this request in good faith and not to delay these proceedings. Therefore,
2 Plaintiff respectfully requests that the Court grant this Motion, and allow Plaintiff until November 12,
3 2021, in which to file Plaintiff's response to Defendants' Motion to Dismiss.

4 DATED this 20th day of October, 2021.

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6 JACKSON LEWIS, P.C.
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/s/ *Joshua A. Sliker*
JOSHUA A. SLIKER, ESQ.
Nevada Bar No. 12493
300 S. Fourth Street, Ste. 900
Las Vegas, Nevada 89101

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Attorneys for Plaintiff
Byrna Technologies, Inc.

ORDER

Good cause appearing, IT IS HEREBY ORDERED that Plaintiff's motion to extend time to respond to Defendants' Motion to Dismiss (Second Request) is GRANTED.


United States District Court Judge

Dated: October 22, 2021